

2:10 pm, Sep 24, 2019

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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INDYMAC VENTURE, LLC,

Plaintiff,

-against-

THOMAS E. MULLIGAN, RIVERHEAD  
BUILDING SUPPLY CORP., and AMERICAN  
EXPRESS CENTURION BANK,

Defendants.

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**ADOPTION ORDER**

2:15-cv-07057 (ADS) (GRB)

**SPATT, District Judge:**

On December 10, 2015, the Plaintiff commenced this diversity action against defendants Thomas E. Mulligan, Riverhead Building Supply Corp., and American Express Centurion Bank (collectively the “Defendants”), pursuant to Article 13 of the New York Real Property Actions and Proceeding Law, to foreclose a mortgage encumbering 5 Marc Street, Shelter Island, New York (the “Property”).

On February 13, 2017, the Clerk of the Court certified the Defendants’ default based upon their failure to answer or otherwise appear in this action.

On November 13, 2018, the Plaintiff filed the instant motion for a default judgment.

On November 15, 2018, the Court referred the motion to United States Magistrate Judge Gary R. Brown for a report and recommendation as to whether the motion should be granted, and if so, what if any relief should be given.

On August 30, 2019, Judge Brown issued a Report and Recommendation (“R&R”) that that the motion for default judgment be denied, the amended complaint be dismissed without

prejudice due to lack of subject matter jurisdiction, and the Plaintiff be given leave to amend the amended complaint to cure the jurisdictional deficiencies.

On September 9, 2019, the Plaintiff filed proof of service.

It has been more than fourteen days since the service of the R&R, and the parties have not filed objections.

As such, pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the R&R for clear error, and finding none, now concurs in both its reasoning and its result. *See Coburn v. P.N. Fin.*, No. 13-CV-1006 (ADS) (SIL), 2015 WL 520346, at \*1 (E.D.N.Y. Feb. 9, 2015) (reviewing Report and Recommendation without objections for clear error).

Accordingly, the R&R is adopted in its entirety. The Court denies the motion for default judgment and dismisses the amended complaint without prejudice due to lack of subject matter jurisdiction. The Plaintiff shall file an amended complaint consistent with the R&R no later than 30 days from the issuance of this opinion.

**SO ORDERED.**

Dated: Central Islip, New York

September 24, 2019

/s/ Arthur D. Spatt

ARTHUR D. SPATT

United States District Judge